

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. Sometime in 1995, S.W., who was then a fifteen-year-old girl, began psychological counseling, along with her mother, as part of her participation in a family crisis program. Her counseling was precipitated by S.W.'s suicidal verbalizations. For the last couple of years, S.W. had been living with her mother, stepfather and younger sister but had recently retreated to her grandmother's home after claiming physical abuse by her stepfather. SRS investigated the physical abuse claims but did not substantiate them. In the course of the counseling, S.W. reported to a psychologist that she was angry with her mother for marrying the stepfather and

wanted her mother to return to her biological father. She also reported that she had been raped by a boy in her G.E.D. class but told the story with a "silly affect" and with inconsistent details raising questions with the psychologist about the accuracy of her statements.¹

2. In February of 1997, S.W., who had returned to live in her mother's home, reported to her social worker that she was having sexual relations with her stepfather and had been having sexual relations with him since she was thirteen. She had not mentioned this alleged sexual assault before during any of her counseling sessions with the psychologist. The social worker observed that S.W. revealed these grave facts with a light-hearted and breezy emotional tone. S.W. was also unable to give any details regarding this alleged sexual activity to the worker. At least part of the discussion about these allegations was attended by S.W.'s mother who angrily denounced her claims as an attempt to get attention by fabricating facts. In spite of her own uncertainty that S.W. was telling the truth, the social worker, as a mandatory abuse reporter felt obliged to bring these allegations to the

¹ Statements made by this witness which could be construed as reflecting generally upon the alleged victim's reputation for truthfulness are struck from the record as inadmissible to prove that the alleged victim acted in

attention of the Department of Social and Rehabilitation Services (SRS) for investigation and she did so in February of 1997.

3. The case was assigned to an SRS investigator with two years of experience in interviewing alleged victims of abuse. She set up an interview of S.W. at the SRS office that she conducted along with a state trooper. That interview was conducted on February 14, 1997 and was recorded on tape. The investigator asked to interview the petitioner with regard to this matter but he declined on the advice of his attorney. S.W.'s sister was also interviewed but she had no information about the likely occurrence of the allegations. S.W. herself was interviewed a second time on March 26, 1997 by the state trooper and the investigator. That interview occurred at S.W.'s high school and was also tape recorded.

4. Based upon these interviews, the SRS investigator decided not to substantiate the allegations. It was her opinion that the interviews were vague and contradictory. However, her recommendation was not adopted by her superiors at SRS who felt that S.W.'s statements were credible and sufficient to find that her stepfather had sexually abused her

conformity with that alleged character trait for purposes of this allegation. See V.R.E. 404(a) and (b).

by having intercourse with her over the last three or four years.

5. The investigator was asked at hearing to verify that written transcripts offered into evidence were accurate transcriptions of the tape recordings of the two interviews conducted with S.W. The investigator had not read the transcripts with any care and was unable to verify their accuracy. The tapes themselves were subsequently submitted into evidence.

6. Following the two interviews, the state trooper who conducted a good deal of the questioning, prepared an affidavit of probable cause based on the information in the interviews. The trooper did not speak to the petitioner because he refused to be interviewed on the advice of his attorney. The focus of the criminal investigation was on whether any sexual activity had occurred before S.W. was sixteen. The trooper had the tapes of the two interviews transcribed by a state police dispatcher. The criminal matter was eventually dropped.

7. Following these interviews, S.W. went to live in a foster home in Burlington and saw her mother and stepfather only on weekends. In November of 1999, S.W., who was then an adult, wanted to return to her mother's home but was told she

could not unless she wrote a letter to her stepfather's attorney confirming that she had made up the allegations.

8. S.W., who is now twenty, appeared and testified at the hearing. She claimed that she had not been abused sexually or physically by the petitioner between the time she was thirteen and sixteen or at any other time during her life. She remembers that she made statements to the trooper and SRS investigator in 1997 to the contrary, saying that the petitioner had sexually abused her on a weekly basis since she was thirteen but says now that those statements are untrue. She says she was motivated to tell lies because she was angry and wanted attention and did not know how to express her feelings. She also agrees that she wrote the letter to the petitioner's attorney recanting her former statements at her mother's request but says that her repudiation of her former remarks is truthful.

9. The petitioner himself denies that he sexually abused S.W. in any way and, in fact, had arranged to never be alone with her after she made four accusations of physical abuse against him during 1995 and 1996. Her mother worked during school hours only and was usually at home when S.W. was there. He says that S.W. resented his marriage to her mother and that she was a discipline problem because she would not

listen to him. He says he was subjected to constant threats by S.W. that she would report him for abuse every time he tried to discipline her.

10. The tapes of the two interviews, with S.W. conducted in the winter of 1997 contradict each other. In the first tape, S.W. declared that she started having sex with her stepfather when she was thirteen at her home during times when her mother was away. She remembered the date of the first time because it was the week before he and her mother married. She stated that she had teased her stepfather and encouraged the activity at first and gave some details indicating how the sexual intercourse took place. She stated that sexual intercourse continued between them once a week for the next four years although she had asked him to stop and that the last episode had occurred during the previous week. She never reported the activity to anyone because she did not want to be labeled as an "idiot" and "slut". She stated that she could not remember the first time that it happened and named various homes they had lived in as the possible site of the first occurrence. She could not list the three homes in which they had lived in chronological order or come up with any consistent lengths of times she had lived in the homes. She also displayed a good deal of hostility toward her mother and

stepfather and a good deal of jealousy of her sister. She revealed as well that she had sexual intercourse with two other persons--one, a boyfriend with whom she had sex twice during the last year and two, a boy who was unknown to her who had raped her in a girl's bathroom also during the last year. She was sure, however, that her stepfather was the first person with whom she had sex.

11. A second interview was conducted some six weeks later in order to obtain more information about the number of times there was an incident of sexual abuse before S.W. turned sixteen. Many of the same questions were asked at this time. During this session, S.W. said that she thought that the first time she had sex with her stepfather might have been on her sixteenth birthday and later said that she was positive that her sixteenth birthday was the first time. She also described the frequency of intercourse thereafter as once per day and said that her stepfather was not the first person with whom she had engaged in sexual intercourse.

12. The two tape recordings made by the Department do not contain persuasive evidence that the petitioner sexually abused S.W. The statements are confused and blatantly contradictory with regard to essential elements such as the onset of the abuse and the frequency. It would be unfair to

conclude from them that any sexual activity occurred between the petitioner and S.W. In addition, the circumstances surrounding and preceding the claim, including S.W.'s open hostility toward her mother, sister and stepfather; her failure to report these events to her family counselor during the two years they spent together; the confused accounts she did give her counselor about other allegations of physical abuse; the inability of SRS to substantiate any of the claims of physical abuse; and S.W.'s subsequent recantation, cast serious doubt on the credibility of her original claims of abuse.

ORDER

The petitioner's request to expunge the record is granted.

REASONS

This decision is based upon the Department's concession to the petitioner's expungement request made on October 30, 2000.

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